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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,975	06/30/2003	Carol L. Erdman	53394.000711	6951

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EXAMINER
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BOGART, MICHAEL G

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3761

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05/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/607,975	<b>Applicant(s)</b> ERDMAN, CAROL L.	
	<b>Examiner</b> Michael G. Bogart	<b>Art Unit</b> 3761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5-9, 11-13 and 15-58 is/are pending in the application.
- 4a) Of the above claim(s) 27-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-9, 11-13, 15-26 and 54-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

Claims 5 and 55 are objected to because of the following informalities:

At claim 5, line 11, before “waist edge” are terms “the a” which appears to be a typographical error.

At claim 55, line 3, before “each”, insert --of--.

Appropriate correction is required.

### ***Claim Rejections – 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5-8, 11, 16, 17, 24-26 and 54-58 are rejected under 35 U.S.C. § 102(b) as being anticipated by Repke *et al.* (US 4,205,679; hereinafter: “Repke”).

Regarding claim 5, Repke teaches an absorbent article (1) having a front portion (14), a back portion (18) and two side portions (26, 28, 30, 32), the article (1) comprising:

a main chassis (14, 16, 18);

an absorbent portion (66); and

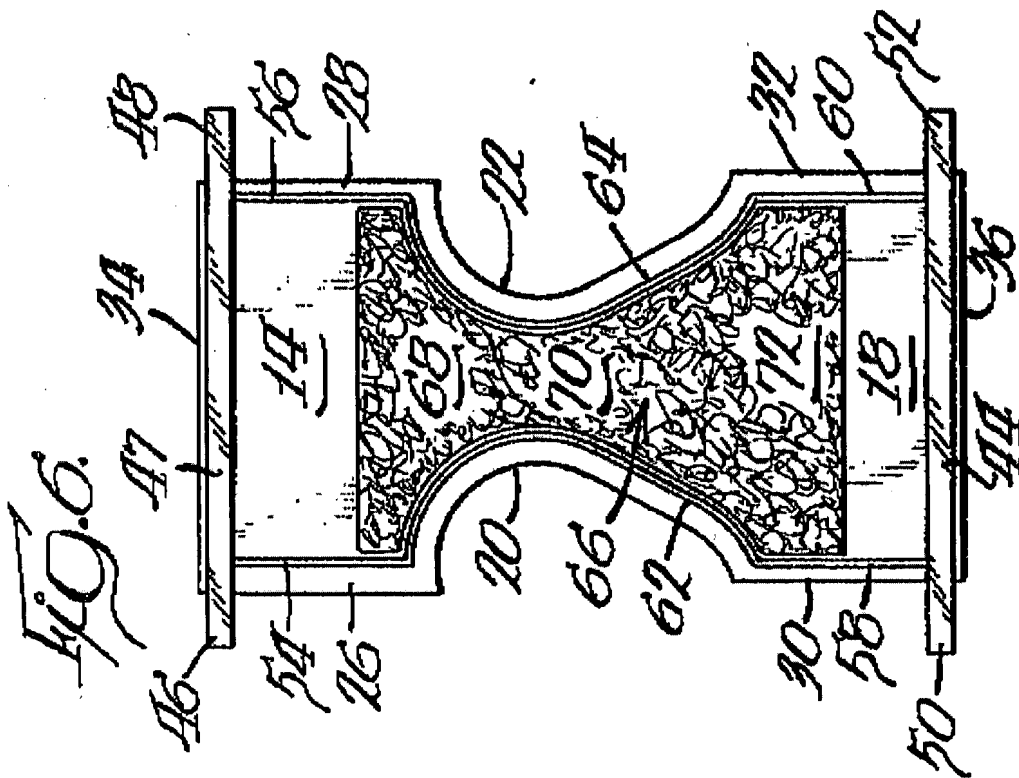
an elastic portion (44, 47) operatively associated with the main chassis (14, 16, 18),

wherein the elastic portion (44, 47) comprises a single first elastic portion (47) in the front

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portion (14) of the article (1), a second elastic portion (44) in the back portion (18) of the article (1), and associated side portions (46, 48, 50, 52) for the first and the second elastic portions (44, 47), the first elastic portion (47) having a larger area in the front portion (14) than in either of the associated side portions (46, 48), and the second elastic portion (44) having a larger area in the back portion (18) than in either of the associated side portions (50, 52), and

wherein the first elastic portion (47) has a depth measured from the a waist edge (34) of the article (1) toward a crotch portion (16) of the article, the second elastic (44) portion has a depth measured from the waist edge (36) of the article (1) toward the crotch portion (16) of the article (1), and the depth of the front portion (14, 47) of the first elastic portion (47) substantially equals the depth of the back portion (18, 44) of the second elastic portion (44)(col. 5, lines 18-68)(see fig. 6, infra).



Regarding claim 6, Repke teaches that both the first and second elastic portions (47, 44) have a first region (14, 47)(18, 44) that overlaps the main chassis (14, 16, 18) and a second region (46, 48, 50, 52) that does not overlap the main chassis (14, 16, 18).

Regarding claim 7, Repke teaches that the first region (14, 47)(18, 44) has *an* area (interpreted herein a 1 mm wide strip extending along the longitudinal centerline of the article) that is smaller than an area (interpreted herein as the total area) of the second region (46, 48, 50, 52).

Regarding claim 8, Repke teaches that the area of the first region is less than ten percent of the total area of the elastic portion (47, 44).

Regarding claim 11, Repke teaches that the first elastic portion (47) has a front elastic portion (14, 47) corresponding to the front portion (14) of the article (1) and two first side elastic portions (46, 48) corresponding to the side portions (26, 28) of the article (1), and the second elastic portion (44) has a back elastic portion (18, 44) corresponding to the back portion (18) of the article (1) and two second side elastic portions (58, 60) corresponding to the side portions (30, 32) of the article (1).

Regarding claim 16, Repke teaches that the side portions (26, 28, 30, 32) are relatively inelastic and require the elastic portions (47, 44) to impart elasticity.

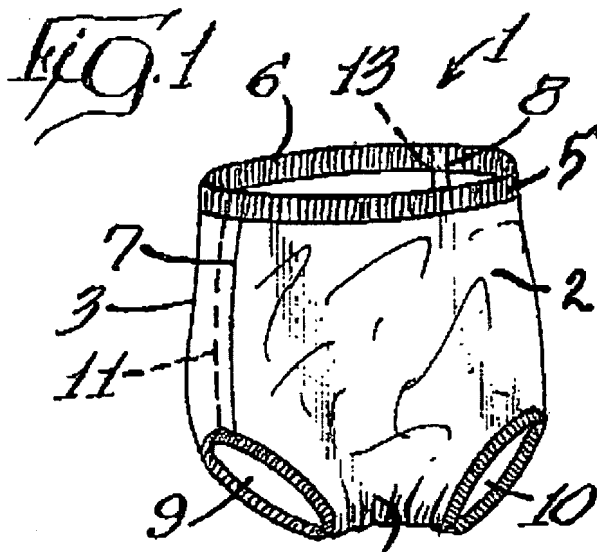
Regarding claim 17, see figure 1, *infra*.

Regarding claim 24, Repke teaches that the first and second elastic portions (47, 44) are rectangular in shape (see fig. 6).

Regarding claims 25 and 26, Repke teaches that the article (1) is a diaper or a pant, see fig. 1, *infra*).

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Regarding claim 54, Repke teaches a first carrier layer (12) operatively associated with the elastic member (47, 44).



Regarding claim 55, Repke teaches that a longitudinal dimension of the first or second elastic portion (47, 44) along the longitudinal direction is a first distance, a longitudinal dimension of each of the associated side portions along the longitudinal direction is a second distance (second distance is equal to first distance), and the first distance is less than twice the second distance (see fig. 6).

Regarding claim 56, Repke teaches a dimension of the first or second elastic portion (47, 44) perpendicular to the longitudinal direction is a third distance, a dimension of each of the two side portions (46, 48, 50, 52) perpendicular to the longitudinal direction is a fourth distance, and the third distance is greater than the fourth distance (see fig. 6).

Regarding claim 57, Repke teaches a dimension of the first or second elastic portion (47, 44) perpendicular to the longitudinal direction is a first distance, a dimension of each of the

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associated side portions (46, 48, 50, 52) perpendicular to the longitudinal direction is a second distance, and the first distance is greater than twice the second distance (see fig. 6).

Regarding claim 58, Repke teaches carrier layers (401, 402) that envelope the elastic portion (423)(see fig. 24).

Claims 5-9, 11-13, 15 and 18-26 are rejected under 35 U.S.C. § 102(e) as being anticipated by Turi *et al.* (US 6,413,249 B1; hereinafter “Turi”).

With respect to claim 5, Turi discloses and absorbent article (100), that comprises a single first elastic portion (115C) and a single second elastic portion (115D) as shown in figure 2A, *infra*. The first and second elastic portions (115C, 115D) have larger areas than either of the side portions (125, 127). The article (100) further comprises a main chassis (103) an absorbent portion, and elastic portion (115). The elastic portion (115) has a larger area in the front portion than it does in the side portions (125, 127). The depth of the first and second elastic portions (115C, 115D) from the waist edge (101, 103) to the crotch portion (139) is substantially equal to each other. Regarding the limitation concerning a “single” first elastic portion and a “single” second elastic portion, the transitional term “comprising”, which is synonymous with “including,” “containing,” or “characterized by,” is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., *Mars Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004). MPEP § 2111.03.

With respect to claims 6-9, the elastic portions (115) have a first region (115A, 115B) that overlaps the main chassis (103), and a second region (121) that does not overlap the main chassis (103). The first region (115A, 115B) can be defined to have *an* area that has a longitudinal length of 1 mm along the longitudinal length of the article that is less than ten

With respect to claim 12, the front elastic portion (115C) has a depth that is greater than the depth of the first elastic side portion (125), as shown in figure 2A.

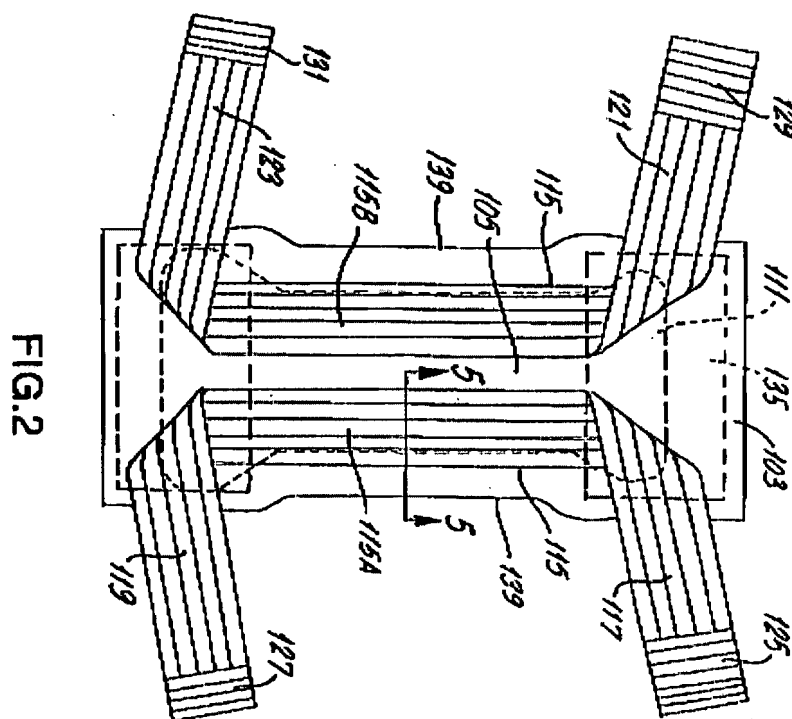


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With respect to claim 13, the back elastic portion (115D), has a depth greater than the depth of the second side portions (127), as shown in figure 2A.

With respect to claim 15, the back elastic portion (115D) has depth greater than the depth of the second side elastic portions as shown in figure 2A.

Regarding claim 18, see fig. 2, infra).



With respect to claims 19 and 20, the first and second elastic portions are triangular in shape, as shown in figure 10.

With respect to claim 21, the first and second elastic portions can be defined to be circular or oval in shape.

With respect to claim 22, the first and second elastic portions can be defined to be circular or oval in shape.

With respect to claim 23, the first and second elastic portions can be defined to be diamond shaped.

With respect to claim 24, the first and second elastic portions can be defined to be rectangular, as shown in figure 2A.

With respect to claim 25, the article (100) is a diaper, as disclosed in column 3, line 7.

With respect to claim 26, the article (100) is a pant, as disclosed in column 1, line 9.

### ***Response to Arguments***

Applicant's arguments with respect to claims 5-8, 24-26 and 54-58 as rejected under Roe have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 18 December 2006 concerning the rejections under Turi have been fully considered but they are not persuasive.

Applicants assert that Turi does not disclose elastic portions that are larger than the side portions. This argument is not persuasive because side portions are no considered to be elements (125) and 127).

Applicants assert that the present invention requires a single first elastic portion and a single second elastic portion. This argument is not persuasive because the transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps.

See *Mars Inc. v. H.J. Heinz Co.*, supra. MPEP § 2111.03.

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Applicants assert that the specifically claimed shapes and sizes of the elastic portions are not taught by Turi. This argument because Turi in Fig. 2A teaches triangle or diamond shapes where the elastic belt overlaps itself. Turi fig. 1 teaches a belt that has assumed an oval or circular shape that can accommodate the waist of a wearer of the article.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart  
27 April 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

